

AMENDED IN ASSEMBLY MARCH 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1562

Introduced by Assembly Member Gomez

January 29, 2014

An act to amend Section 12945.2 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1562, as amended, Gomez. Employment: leave.

The Moore-Brown-Roberti Family Rights Act makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period (1) to bond with a child who was born to, adopted by, or placed for foster care with, the employee, (2) to care for the employee's parent, spouse, or child who has a serious health condition, as defined, or (3) because the employee is suffering from a serious health condition rendering him or her unable to perform the functions of the job. Under the act, an employee is required to have more than 12 months of service with the employer and at least 1,250 hours of service with the employer during the previous 12-month period.

The act authorizes an employer to refuse to reinstate an employee returning from leave under specified circumstances.

~~This bill would designate an eligible employee as an entitled employee. The bill, with respect to a public or private school employee, instead of requiring 1,250 hours of service with the employer during the previous 12-month period, would require *during that period* service of at least 60% of a full-time equivalent position during the previous~~

~~12-month period.~~ *the hours that an employee who is employed fulltime is required to perform in a school year.*

The bill would exempt public and private school employees from that reinstatement exception.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12945.2 of the Government Code is
2 amended to read:

3 12945.2. (a) Except as provided in subdivision (b), it is an
4 unlawful employment practice for an employer to refuse to grant
5 a request by an ~~entitled~~ *eligible* employee to take up to a total of
6 12 workweeks in any 12-month period for family care and medical
7 leave. Family care and medical leave requested pursuant to this
8 subdivision shall not be deemed to have been granted unless the
9 employer provides the employee, upon granting the leave request,
10 a guarantee of employment in the same or a comparable position
11 upon the termination of the leave. The commission shall adopt a
12 regulation specifying the elements of a reasonable request.

13 (b) Notwithstanding subdivision (a), it is not an unlawful
14 employment practice for an employer to refuse to grant a request
15 for family care and medical leave by an employee if the employer
16 employs fewer than 50 employees within 75 miles of the worksite
17 where that employee is employed.

18 (c) For purposes of this section:

19 (1) "Child" means a biological, adopted, or foster child, a
20 stepchild, a legal ward, or a child of a person standing in loco
21 parentis who is either of the following:

22 (A) Under 18 years of age.

23 (B) An adult dependent child.

24 (2) "Employer" means either of the following:

25 (A) Any person who directly employs 50 or more persons to
26 perform services for a wage or salary.

27 (B) The state, and any political or civil subdivision of the state
28 and cities.

29 (3) ~~"Entitled"~~ *"Eligible employee"* means an employee with
30 more than 12 months of service with the employer, and who
31 complies with one of the following:

1 (A) Except as specified in subparagraph (B), has at least 1,250
2 hours of service with the employer during the previous 12-month
3 period.

4 (B) With respect to a public or private school employee, has
5 served, *during the previous 12-month period*, at least 60 percent
6 of ~~a full-time equivalent position during the previous 12-month~~
7 ~~period~~; *the hours of service that an employee who is employed full*
8 *time is required to perform in a school year.*

9 (4) “Family care and medical leave” means any of the following:

10 (A) Leave for reason of the birth of a child of the employee, the
11 placement of a child with an employee in connection with the
12 adoption or foster care of the child by the employee, or the serious
13 health condition of a child of the employee.

14 (B) Leave to care for a parent or a spouse who has a serious
15 health condition.

16 (C) Leave because of an employee’s own serious health
17 condition that makes the employee unable to perform the functions
18 of the position of that employee, except for leave taken for
19 disability on account of pregnancy, childbirth, or related medical
20 conditions.

21 (5) “Employment in the same or a comparable position” means
22 employment in a position that has the same or similar duties and
23 pay that can be performed at the same or similar geographic
24 location as the position held prior to the leave.

25 (6) “FMLA” means the federal Family and Medical Leave Act
26 of 1993 (P.L. 103-3).

27 (7) “Health care provider” means any of the following:

28 (A) An individual holding either a physician’s and surgeon’s
29 certificate issued pursuant to Article 4 (commencing with Section
30 2080) of Chapter 5 of Division 2 of the Business and Professions
31 Code, an osteopathic physician’s and surgeon’s certificate issued
32 pursuant to Article 4.5 (commencing with Section 2099.5) of
33 Chapter 5 of Division 2 of the Business and Professions Code, or
34 an individual duly licensed as a physician, surgeon, or osteopathic
35 physician or surgeon in another state or jurisdiction, who directly
36 treats or supervises the treatment of the serious health condition.

37 (B) Any other person determined by the United States Secretary
38 of Labor to be capable of providing health care services under the
39 FMLA.

1 (8) “Parent” means a biological, foster, or adoptive parent, a
2 stepparent, a legal guardian, or other person who stood in loco
3 parentis to the employee when the employee was a child.

4 (9) “Serious health condition” means an illness, injury,
5 impairment, or physical or mental condition that involves either
6 of the following:

7 (A) Inpatient care in a hospital, hospice, or residential health
8 care facility.

9 (B) Continuing treatment or continuing supervision by a health
10 care provider.

11 (d) An employer shall not be required to pay an employee for
12 any leave taken pursuant to subdivision (a), except as required by
13 subdivision (e).

14 (e) An employee taking a leave permitted by subdivision (a)
15 may elect, or an employer may require the employee, to substitute,
16 for leave allowed under subdivision (a), any of the employee’s
17 accrued vacation leave or other accrued time off during this period
18 or any other paid or unpaid time off negotiated with the employer.
19 If an employee takes a leave because of the employee’s own serious
20 health condition, the employee may also elect, or the employer
21 may also require the employee, to substitute accrued sick leave
22 during the period of the leave. However, an employee shall not
23 use sick leave during a period of leave in connection with the birth,
24 adoption, or foster care of a child, or to care for a child, parent, or
25 spouse with a serious health condition, unless mutually agreed to
26 by the employer and the employee.

27 (f) (1) During any period that an ~~entitled~~ *eligible* employee
28 takes leave pursuant to subdivision (a) or takes leave that qualifies
29 as leave taken under the FMLA, the employer shall maintain and
30 pay for coverage under a “group health plan,” as defined in Section
31 5000(b)(1) of the Internal Revenue Code, for the duration of the
32 leave, not to exceed 12 workweeks in a 12-month period,
33 commencing on the date leave taken under the FMLA commences,
34 at the level and under the conditions coverage would have been
35 provided if the employee had continued in employment
36 continuously for the duration of the leave. Nothing in the preceding
37 sentence shall preclude an employer from maintaining and paying
38 for coverage under a “group health plan” beyond 12 workweeks.
39 An employer may recover the premium that the employer paid as
40 required by this subdivision for maintaining coverage for the

1 employee under the group health plan if both of the following
2 conditions occur:

3 (A) The employee fails to return from leave after the period of
4 leave ~~to~~ *for* which the employee is ~~entitled~~ *eligible* has expired.

5 (B) The employee's failure to return from leave is for a reason
6 other than the continuation, recurrence, or onset of a serious health
7 condition that entitles the employee to leave under subdivision (a)
8 or other circumstances beyond the control of the employee.

9 (2) (A) Any employee taking leave pursuant to subdivision (a)
10 shall continue to be ~~entitled~~ *eligible* to participate in employee
11 health plans for any period during which coverage is not provided
12 by the employer under paragraph (1), employee benefit plans,
13 including life insurance or short-term or long-term disability or
14 accident insurance, pension and retirement plans, and supplemental
15 unemployment benefit plans to the same extent and under the same
16 conditions as apply to an unpaid leave taken for any purpose other
17 than those described in subdivision (a). In the absence of these
18 conditions an employee shall continue to be ~~entitled~~ *eligible* to
19 participate in these plans and, in the case of health and welfare
20 employee benefit plans, including life insurance or short-term or
21 long-term disability or accident insurance, or other similar plans,
22 the employer may, at his or her discretion, require the employee
23 to pay premiums, at the group rate, during the period of leave not
24 covered by any accrued vacation leave, or other accrued time off,
25 or any other paid or unpaid time off negotiated with the employer,
26 as a condition of continued coverage during the leave period.
27 However, the nonpayment of premiums by an employee shall not
28 constitute a break in service, for purposes of longevity, seniority
29 under any collective bargaining agreement, or any employee benefit
30 plan.

31 (B) For purposes of pension and retirement plans, an employer
32 shall not be required to make plan payments for an employee
33 during the leave period, and the leave period shall not be required
34 to be counted for purposes of time accrued under the plan.
35 However, an employee covered by a pension plan may continue
36 to make contributions in accordance with the terms of the plan
37 during the period of the leave.

38 (g) During a family care and medical leave period, the employee
39 shall retain employee status with the employer, and the leave shall
40 not constitute a break in service, for purposes of longevity, seniority

1 under any collective bargaining agreement, or any employee benefit
2 plan. An employee returning from leave shall return with no less
3 seniority than the employee had when the leave commenced, for
4 purposes of layoff, recall, promotion, job assignment, and
5 seniority-related benefits such as vacation.

6 (h) If the employee's need for a leave pursuant to this section
7 is foreseeable, the employee shall provide the employer with
8 reasonable advance notice of the need for the leave.

9 (i) If the employee's need for leave pursuant to this section is
10 foreseeable due to a planned medical treatment or supervision, the
11 employee shall make a reasonable effort to schedule the treatment
12 or supervision to avoid disruption to the operations of the employer,
13 subject to the approval of the health care provider of the individual
14 requiring the treatment or supervision.

15 (j) (1) An employer may require that an employee's request
16 for leave to care for a child, a spouse, or a parent who has a serious
17 health condition be supported by a certification issued by the health
18 care provider of the individual requiring care. That certification
19 shall be sufficient if it includes all of the following:

20 (A) The date on which the serious health condition commenced.

21 (B) The probable duration of the condition.

22 (C) An estimate of the amount of time that the health care
23 provider believes the employee needs to care for the individual
24 requiring the care.

25 (D) A statement that the serious health condition warrants the
26 participation of a family member to provide care during a period
27 of the treatment or supervision of the individual requiring care.

28 (2) Upon expiration of the time estimated by the health care
29 provider in subparagraph (C) of paragraph (1), the employer may
30 require the employee to obtain recertification, in accordance with
31 the procedure provided in paragraph (1), if additional leave is
32 required.

33 (k) (1) An employer may require that an employee's request
34 for leave because of the employee's own serious health condition
35 be supported by a certification issued by his or her health care
36 provider. That certification shall be sufficient if it includes all of
37 the following:

38 (A) The date on which the serious health condition commenced.

39 (B) The probable duration of the condition.

1 (C) A statement that, due to the serious health condition, the
2 employee is unable to perform the function of his or her position.

3 (2) The employer may require that the employee obtain
4 subsequent recertification regarding the employee's serious health
5 condition on a reasonable basis, in accordance with the procedure
6 provided in paragraph (1), if additional leave is required.

7 (3) (A) In any case in which the employer has reason to doubt
8 the validity of the certification provided pursuant to this section,
9 the employer may require, at the employer's expense, that the
10 employee obtain the opinion of a second health care provider,
11 designated or approved by the employer, concerning any
12 information certified under paragraph (1).

13 (B) The health care provider designated or approved under
14 subparagraph (A) shall not be employed on a regular basis by the
15 employer.

16 (C) In any case in which the second opinion described in
17 subparagraph (A) differs from the opinion in the original
18 certification, the employer may require, at the employer's expense,
19 that the employee obtain the opinion of a third health care provider,
20 designated or approved jointly by the employer and the employee,
21 concerning the information certified under paragraph (1).

22 (D) The opinion of the third health care provider concerning
23 the information certified under paragraph (1) shall be considered
24 to be final and shall be binding on the employer and the employee.

25 (4) As a condition of an employee's return from leave taken
26 because of the employee's own serious health condition, the
27 employer may have a uniformly applied practice or policy that
28 requires the employee to obtain certification from his or her health
29 care provider that the employee is able to resume work. Nothing
30 in this paragraph shall supersede a valid collective bargaining
31 agreement that governs the return to work of that employee.

32 (I) It is an unlawful employment practice for an employer to
33 refuse to hire, or to discharge, fine, suspend, expel, or discriminate
34 against, any individual because of any of the following:

35 (1) An individual's exercise of the right to family care and
36 medical leave provided by subdivision (a).

37 (2) An individual's giving information or testimony as to his or
38 her own family care and medical leave, or another person's family
39 care and medical leave, in any inquiry or proceeding related to
40 rights guaranteed under this section.

1 (m) This section shall not be construed to require any changes
2 in existing collective bargaining agreements during the life of the
3 contract, or until January 1, 1993, whichever occurs first.

4 (n) The amendments made to this section by Chapter 827 of the
5 Statutes of 1993 shall not be construed to require any changes in
6 existing collective bargaining agreements during the life of the
7 contract, or until February 5, 1994, whichever occurs first.

8 (o) This section shall be construed as separate and distinct from
9 Section 12945.

10 (p) Leave provided for pursuant to this section may be taken in
11 one or more periods. The 12-month period during which 12
12 workweeks of leave may be taken under this section shall run
13 concurrently with the 12-month period under the FMLA, and shall
14 commence the date leave taken under the FMLA commences.

15 (q) In any case in which both parents ~~entitled to~~ *eligible for*
16 leave under subdivision (a) are employed by the same employer,
17 the employer shall not be required to grant leave in connection
18 with the birth, adoption, or foster care of a child that would allow
19 the parents family care and medical leave totaling more than the
20 amount specified in subdivision (a).

21 (r) (1) Notwithstanding subdivision (a), an employer may refuse
22 to reinstate an employee returning from leave to the same or a
23 comparable position if all of the following apply:

24 (A) The employee is a salaried employee who is among the
25 highest paid 10 percent of the employer's employees who are
26 employed within 75 miles of the worksite at which that employee
27 is employed.

28 (B) The refusal is necessary to prevent substantial and grievous
29 economic injury to the operations of the employer.

30 (C) The employer notifies the employee of the intent to refuse
31 reinstatement at the time the employer determines the refusal is
32 necessary under subparagraph (B).

33 (2) In any case in which the leave has already commenced, the
34 employer shall give the employee a reasonable opportunity to
35 return to work following the notice prescribed by subparagraph
36 (C).

37 (3) This subdivision does not apply to public or private school
38 employees.

39 (s) Leave taken by an employee pursuant to this section shall
40 run concurrently with leave taken pursuant to the FMLA, except

1 for any leave taken under the FMLA for disability on account of
2 pregnancy, childbirth, or related medical conditions. The aggregate
3 amount of leave taken under this section or the FMLA, or both,
4 except for leave taken for disability on account of pregnancy,
5 childbirth, or related medical conditions, shall not exceed 12
6 workweeks in a 12-month period. An employee ~~is entitled to~~ *may*
7 take, in addition to the leave provided for under this section and
8 the FMLA, the leave provided for in Section 12945, if the
9 employee is otherwise qualified for that leave.

10 (t) It is an unlawful employment practice for an employer to
11 interfere with, restrain, or deny the exercise of, or the attempt to
12 exercise, any right provided under this section.